

EXHIBIT I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

FRED HANEY, MARSHA MERRILL,
SYLVIA RAUSCH, STEPHEN SWENSON,
and ALAN WOOTEN, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

GENWORTH LIFE INSURANCE
COMPANY and GENWORTH LIFE
INSURANCE COMPANY OF NEW
YORK,

Defendants.

Civil Action No.: 3:22-cv-00055-REP

Declaration of Harris D. Butler, III, Esquire

I, Harris D. Butler, III, on this 15th day of September, 2022, declare under penalty of perjury that the following statements set forth in this Declaration are true and correct.

1. I am over the age of eighteen years and have personal knowledge of the statements made herein.

2. I am an attorney licensed by the Virginia State Bar (VSB No. 26483) and have been admitted to practice before all courts in the Commonwealth of Virginia; the United States District Court for the Eastern District of Virginia; appellate Courts in Virginia, Texas, and the District of Columbia; the Fourth, Fifth, and Ninth United States Circuit Courts of Appeal; and the United States Supreme Court.

3. I am a partner of Butler Curwood, PLC, 140 Virginia Street, Suite 302, Richmond, Virginia 23219, where I maintain offices.

4. I graduated from the University of Houston School of Law, Houston, Texas in 1981 and practiced civil litigation in Houston from 1981-1986, concentrating primarily in the areas of civil rights, employment law, medical malpractice, and products liability. In 1987, I relocated to Richmond, Virginia and continued my litigation practice in state and federal courts, concentrating in civil litigation. In 1993, I co-founded the Richmond law firm of Butler, Macon, Williams, Pantele & Lowndes, P.C., which evolved into Butler, Williams & Skilling, P.C. and, since 2011, the plaintiffs' complex litigation side of our practice, first Butler Royals, PLC and now Butler Curwood, PLC.

5. For many years, my peers have included me among the Super Lawyers in Employment Litigation. I was honored to be recognized by Virginia Lawyers Weekly as one of the 2016 Virginia "Leaders in the Law."

6. Since founding the Butler Macon firm in 1993, I have developed an extensive employment practice involving the litigation of individual and class/collective employment matters. The majority of my practice now involves representing employee plaintiffs in employment litigation; however, I have also continued to occasionally work on complex civil cases in state and federal court outside of the employment law field. For example, I was recently involved in the Virginia state court Volkswagen Clean Diesel Litigation consumer fraud claims litigated under the Virginia Multi-Claimant Act in Fairfax County (coordinated pretrial), and Richmond (trial/settlement) Virginia Circuit Courts and served as a member of that case's initial Plaintiffs' steering committee.

7. I am a Fellow of the American College of Trial Lawyers ("ACTL") and serve on its Virginia state council. I am also a member of the National Employment Lawyers Association ("NELA"), its Virginia affiliate ("VELA"), the American Association of

Justice (“AAJ”), the Virginia Trial Lawyers Association (“VTLA”), and the Richmond (“RBA”), Virginia (“VBA”) and the American (“ABA”) Bar Associations.

8. I have served in several bar association capacities, including service as Chair of the VBA’s Law Practice Management Section, Chair of the Employment section of the VTLA, a member of the VTLA Board of Governors and member of the VBA Labor and Employment Section Executive Committee. I am the past Chair of the VBA Law and Employment Law Section.

9. I have been active in church and civic activities, as well as professional continuing legal education. In that regard, I regularly speak on employment and civil litigation issues at continuing legal education and other seminars for the VBA, Virginia Continuing Legal Education, VTLA, RBA, and other organizations. I have also presented for Virginia Continuing Judicial Education, the Impact Fund and at the Annual North and South Carolina Bar Associations’ Labor and Employment Conference on collective and class action topics. From 2013-2017, I served as an adjunct professor of trial skills at the University of Richmond, T.C. Williams School of Law.

10. Through my career, I have successfully litigated numerous employment discrimination and other federal statutory cases on behalf of employees in Virginia as well as in jurisdictions outside Virginia. I am presently lead counsel in a putative Rule 23 Section 1981/Title VII action styled *Cobb, et al v. Arc Energy, Inc.*, 21cv1913 (JMC/SVH) (D.S.C.); co-lead counsel in a Rule 23 ERISA putative class action styled *Moore v. Virginia Community Bankshares, Inc., et al*, 3:19-cv-00045 (W.D. Va.); and lead/local counsel in numerous collective action matters, *e.g. Wade, et al v. Capital One Financial Corporation*, 3:20cv00415-MHL (ADEA and FLSA collective); *Sziber v. Dominion Energy, Inc.*,

3:20cv00117-JAG (FLSA collective); *Hall, et al v. Dominion Energy, Inc., et al*; 3:18cv321-JAG (FLSA collective);

11. I am regularly asked to provide expert testimony in fee application proceedings in matters of complex federal litigation, including employment litigation. *See, e.g. Jones v. Southpeak Interactive Corp., et al*, 2014 U.S. Dist. LEXIS 91177 (E.D. Va. July 2, 2014), *aff'd* 777 F.3d 658 (4th Cir. 2015) (award based on 2014 rates); *Owen v. Rutherford Supply Corp.*, 3:19cv225 (HEH) (April 2020); *White Coat Waste Project v. Great Richmond Transit Company*, 3:17cv719 (June 2020); *Titilayo Shiyanbade v. Exec. Health Group, PC*, 3:19cv726 (E.D. Va.); *Fisher v. Land and Sea Restaurant Co., LLC*, 7:18cv512 (GEC) (Western District of Virginia); *Rogers v. Virginia State Registrar*, 1:19cv1149 E.D. Va. (Alexandria Division) (RDA/IDD) (November, 2019).

12. I am familiar with the Richmond, Virginia legal market, and the hourly rates charged by attorneys practicing in this area before the U. S. District Courts, including in Richmond, Virginia, with similar years of experience and practice as Class Counsel, and in similar complex federal litigation. I am familiar with the Rule 23 class settlement review processes and the determination of fees under Rule 23. I am also familiar with decisions of the Fourth Circuit Court of Appeals and Eastern District of Virginia considering the calculation of fees in class actions. These decisions include *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575 (E.D. Va. 2016), *Grisson v. The Mills Corp.*, 549 F. 3d 313, 320 (4th Cir. 2008), and *In re Genworth Financial Securities Litigation*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016). I have also reviewed and am familiar with this Court's November 13, 2020 Memorandum Opinion concerning attorneys' fees involving counsel before the Court in this case in the matter of *Jerome*

Skochin et al. v. Genworth Financial, Inc., et al., Civil Action No. 3:19-cv-49, as well as this Court's June 28, 2022 Memorandum Opinion concerning attorneys' fees involving the same counsel in the matter of *Judy Halcom et al. v. Genworth Life Insurance Co., et al.*, Civil Action No. 3:21-cv-19.

13. I am personally familiar with local Class Counsel, Jonathan Petty and Michael Phelan of Phelan Petty, PLC. I formerly practiced with Mr. Phelan at Butler, Williams & Skilling, P.C., and am aware that both attorneys regularly handle complex civil litigation matters in state and federal courts throughout Virginia and nationwide. I know them to possess extensive civil litigation experience of over twenty-five years each, and their firm enjoys a well-deserved reputation for excellence in the Richmond, Virginia legal community and across the Commonwealth.

14. I am also personally familiar with the Berger Montague firm, having co-counseled with Merrill Davidoff and Alan Sandals of that firm in *Church, et al v. Consolidated Freightways, Inc.*, No. C-90-2290 (DLJ) (hybrid Rule 23 securities/ERISA action, ADEA collective action), *see, e.g.* 137 F.R.D. 294 (N.D. Cal 1991). While I do not personally know the Berger Montague attorneys or other attorneys representing the class in this matter, I have reviewed the firm resumes of Berger Montague, Goldman Scarlato & Penny, P.C. and Robbins Geller Rudman & Dowd LLP, which contain the professional biographies describing the backgrounds and past litigation experience of the individual attorneys comprising the class counsel team. All of these firms and the attorneys involved here have significant experience litigating class action and other complex federal claims throughout the country.

15. I am familiar with this case, having read the Complaint, ECF No. 1, and Plaintiffs' Memorandum of Law in Support of Motion to Direct Notice of Proposed Settlement to the Class, ECF No. 27. From reading these materials, and from speaking with counsel Jonathan Petty, I am generally aware of the basic course of the litigation in this action. I understand that this case was filed after Class Counsel had litigated extensively with these same defendants and defense counsel in achieving a highly successful settlement in this Court in two similar class actions, the *Skochin* and *Halcom* matters. Armed with the knowledge and expertise gained in that litigation, the parties agreed to, and did participate in, a multi-day mediation with experienced mediator Rodney A. Max of Upchurch, Watson, White & Max Mediation Group, who had previously mediated both the *Skochin* and *Halcom* settlements. I have also used Mr. Max as a mediator. I understand that the parties reached an agreement to settle all claims involving the class, as described in the Joint Stipulation of Class Action Settlement and Release, ECF No. 33. I am of the opinion that the settlement achieved in this case represents an excellent result for the class.

16. To achieve the result obtained, Class Counsel applied skill and expertise in identifying claims, anticipating and neutralizing defenses, analyzing large amounts of data, and working collaboratively with opposing counsel toward a negotiated result for a class consisting of tens of thousands of members. Having successfully litigated and resolved the *Skochin* case involving a large class with similar complex claims against these same defendants, class counsel was truly uniquely positioned and qualified to provide efficient and effective representation to the class before the Court.¹

17. I understand that the law firms comprising the Class Counsel team charge hourly rates in the following ranges:

- Partner: \$500.00 to \$1,100.00
- Associate: \$350.00 to \$630.00
- Paralegal: \$100.00 to \$375.00

I understand that these rates have been used to calculate a lodestar fee application that is contingent upon a successful resolution of this litigation.

18. Contingency fee representation allows litigants who would not be financially able to sustain federal court litigation and expert fees, depositions or other costs to pursue federal statutory rights. The inherent risk of recovery and, importantly, the unknown timing of a future recovery - which could be years after interlocutory appeals, trial and post-verdict appeals - would undermine federal policy if contingency representation were not permitted. For single party or single event cases, the common practice for contingency fee contracts in the Richmond, Virginia legal market is for plaintiffs' attorneys to have a contingency fee contract of 33 to 40% of the gross amount recovered, and in complex federal litigation, a 40% contract is the norm. An hourly rate that is contingent on the outcome of complex federal litigation is typically and justifiably higher than an hourly rate that is billed and paid incrementally throughout the litigation, regardless of the results, because of the significant risk of recovery.

19. Class action litigation is considered complex federal statutory litigation. The representation of a class consisting of tens of thousands of members requires considerations far different from complex federal litigation of a single plaintiff. Successful representation of class requires time and skill, and can be a large burden for a small firm. The complex nature of class action cases is reflected in the fact that very

few attorneys in the Richmond, Virginia legal community successfully prosecute these cases. The results achieved by Class Counsel in this litigation demonstrates the level of expertise commanded by the law firms' efforts, are at or below the market rates for federal court litigation in the Richmond Division of the Eastern District of Virginia, and support the rates requested.

20. The market rate for a particular area of practice within a community is not separated into sub-categories of "plaintiffs'" rates and "defense" rates – there is simply a market rate for such litigation. The market rate for complex federal litigation in the Richmond, Virginia market would certainly be commensurate with the amounts that Class Counsel, myself, and defense litigators in this Court regularly charge in such complex federal court litigation. In order to prevail, Class Counsel must overcome the defenses asserted by counsel at these rates and, therefore, the prevailing market rates are, or should be, in the same range.

21. I have consulted with other Richmond based attorneys who regularly appear in the Eastern District of Virginia regarding their firms' billable rates and have conducted research regarding recent fee applications and orders awarding fees in the Eastern District of Virginia that are public record through PACER.

22. It is my understanding that in the *Skochin* matter, counsel for Genworth specifically represented to Class Counsel that the standard billing rates for the Richmond based McGuireWoods attorneys and staff that worked on the case were (in 2020) as follows:

- Senior Partner (partner for 20 plus years): \$1,070.00/hour
- Partner (partner for 10 plus years): \$855.00/hour
- Partner (partner for 4 plus years): \$780.00/hour

- Associate Attorney: \$530.00/hour
- Paralegal: \$340.00/hour

Additionally concerning Eastern District Virginia market rates, in a recent filing in this Court in the case of *Golden Bethune-Hill, et al. v. Virginia State Board of Elections et al.*, Case No. 3:14-cv-00852-REP-GBL-BMK, McGuire Woods attorney Dion W. Hayes submitted a declaration in support of a motion for attorneys' fees in which he attests to the rates charged in the Richmond legal market, stating: "[i]n my experience, federal courts in Richmond routinely award partner rates in excess of \$1,000 per hour for specialized legal work." Ex. 1, p. 2. He also provides a table listing the historical Richmond rates of McGuireWoods professionals from 2017-2019, to wit:

| Title (Years of Experience) | 2017 MW Average Richmond Standard Rate | 2018 MW Average Richmond Standard Rate | 2019 MW Average Richmond Standard Rate | 2017 PC Average Richmond Rate | 2018 PC Average Richmond Rate | 2019 PC Average Richmond Rate |
|--|---|---|---|--|--|--|
| Senior Partner (26+) | \$870 | \$879 | \$937 | \$675 | \$715 | \$750 |
| Junior Partner (up to 25) | \$732 | \$736 | \$760 | \$504 | \$544 | \$584 |
| Senior Associate (5+) | \$496 | \$507 | \$534 | \$415 | \$430 | \$480 |
| Junior Associate (0-4) | \$368 | \$404 | \$432 | N/A | \$370 | \$400 |
| Paralegal | \$260 | \$267 | \$281 | \$230 | \$235 | \$250 |

Id., at. 5.

23. In the *Golden Bethune-Hill* case, attorney Robert A. Angle of the Richmond based firm Troutman Sanders (now Troutman Pepper) submitted a declaration as an expert witness on the subject of the reasonableness of attorneys' fees in the Eastern District of Virginia. In it, Mr. Angle attests to the 2019 billable rates for the Troutman Sanders Richmond office as follows:

- Partner: \$585/hour to \$855/hour
- Associate: \$370/hour to \$550/hour
- Paralegals: \$145/hour to \$270/hour

Ex. 2, at. 6-7.

24. There are numerous other fee applications with supporting declarations and favorable orders awarding billable rates exceeding \$1,000/hour in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division. For example, recently, Judge Keith L. Phillips entered an order granting a fee application in *In re: Gemstone Solutions Group, Inc., et al.*, Case No. 19-30258 (KLP), that included the following billable rates:

- Tax Partner: \$1,540/hour
- Special Counsel: \$1,120/hour
- Associate: \$920/hour
- Legal Assistant: \$300/hour

Ex.3.

25. Last year, Judge Kevin R. Huennekens entered an order in the *In re Pier 1 Imports, Inc. et al.* bankruptcy, Case No. 20-30805 (KRH) approving a fee application that included the following rates for the period February 17, 2020 – May 31, 2020:

- Partner: \$1,150/hour
- Senior Counsel: \$800/hour
- Of Counsel: \$645/hour
- Associate: \$245/hour
- Paralegal: \$180.00

Ex. 4.

26. Finally, I am aware that this Court approved the same attorney billable rates at issue here last year in the *Halcom* matter.

27. In my opinion, the rates requested by class counsel are fair and reasonable, and within the market rates for the Eastern District of Virginia, Richmond Division.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated this 15th day of September 2022.



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